FILED

AUG 05 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANET DAWN BOWMAN,

Plaintiff - Appellant,

v.

RONNY DOZIER, in his individual capacity; DESCHUTES COUNTY SHERIFF'S DEPARTMENT, a subdivision of Deschutes County, a municipal corporation of the State of Oregon,

Defendants - Appellees.

No. 02-35007

D.C. No. CV-01-06004-CO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Thomas M. Coffin, Magistrate, Presiding

Argued and Submitted July 7, 2003
Portland, Oregon

Before: SCHROEDER, Chief Judge, HUG, and BERZON, Circuit Judges.

Janet Bowman ("Bowman") appeals the district court's grant of summary judgment against her in her 42 U.S.C. § 1983 action against Deputy Ronny Dozier

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

and the Deschutes County Sheriff Department for the alleged use of excessive force. Because the facts are familiar to the parties, we recount them only as necessary to explain our decision.

In analyzing qualified immunity, the Supreme Court has instructed lower courts to follow a two-step inquiry. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). First, whether the officer's conduct violated a constitutional right. *See id.* If no constitutional right is violated there is "no necessity for further inquiries concerning qualified immunity." *Id.* If a right is violated, then the second inquiry is whether that right was clearly established at the time of the incident. *See id.* A constitutional right is clearly established when "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.*

To succeed on a excessive force claim under the Fourth Amendment, a claimant must show that the officer's actions were objectively unreasonable under the circumstances. *Graham v. Connor*, 490 U.S. 386, 388 (1989). In viewing the evidence in the light most favorable to Bowman, we are unable to say that the Dozier's actions were not objectively reasonable under the circumstances. *See Saucier v. Katz*, 533 U.S. 194, 204-05 (2001); *Graham*, 490 U.S. at 396-97 (1989); *Robinson v. Solano County*, 278 F.3d 1007, 1013-14 (9th Cir. 2002) (en banc). In effectuating the lawful arrest, Dozier's attempt to pull Bowman to her

feet, which is clearly a necessary step in getting her to the patrol car, was not unreasonable. The right to make an arrest necessarily carries with it the right to use "some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396. Therefore, under the first prong of *Saucier*'s qualified immunity analysis, there was no constitutional violation. *Saucier*, 533 U.S. at 201.

Even if the force used here were determined to be excessive, we would proceed to ask whether the right that was violated was clearly established. *See Saucier*, 533 U.S. at 206–07. We find that the contours of the right against excessive force in this context were not so clearly established at the time that a reasonable officer would have known that his conduct was unlawful. *See id*. at 202. *See also Hope v. Pelzer*, 536 U.S. 730, 739 (2002). After 30-40 minutes of delay, some force had to be used to effectuate the arrest, and the pulling on Bowman's arm to get her to her feet does not constitute a clearly established violation of the law.

Under 42 U.S.C. § 1983, a municipality like the Deschutes County Sheriff Department can be held liable for damages, however, because we find that there is no constitutional violation, there can be no liability. *See, e.g., Los Angeles v. Heller*, 475 U.S. 796 (1986); *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994).

AFFIRMED.